IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 3927 of 1995

Between:

P.Laxminarayana Reddy S/o.Narasimha Reddy
R/o.Saidabad Hyderabad.

..... PETITIONER

AND

1 The Commissioner,Minicipal Corporation of Hyderabad
Tank Bund Road, Hyderabad.
2 The Dy.Commissioner of Police, South Zone
Hyderabad.
3 The Station House Officer Saidabad Police Station
Saidabad Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ,order or direction declaring the action of the respondents in allowing the constructions in the space left out for roads in front of Plot.Nos.96 to 106 of Sti Vinayanagar Cooperative Housing Society Limited, Saidabad, Hyderabad as illegal and arbitrary, by directing the respondents not to allow any constructions to be carried out in the space left out for roads, by removing the encroachments already made; Award costs.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondent No.1: MR.RAMA RAO GANTA (SC FOR MCH).

Counsel for the Respondents 2 & 3: G.P FOR HOME

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the Municipal Corporation of Hyderabad.

2. The writ petition is filed seeking a declaration that the action of the respondents in allowing the constructions in the space left out for roads in front of Plot Nos. 96 to 106 of Sri Vinayanagar Cooperative Housing society Limited, Saidabad, Hyderabad, as illegal and arbitrary, and for a consequential direction to the respondents not to allow any constructions to be carried out in the space left out for roads, by removing the encroachments already made.

3. It appears that in between Plot Nos.96 to106 the petitioner has got his plot bearing No.97. Adjacent to that, there is a vacant space which was earmarked for road which lies in front of plot Nos.96 to106. It is alleged that some portion of the said land was encroached by some people and construction of a temple and a mosque was started. It was reported to the concerned authorities about this encroachment by the petitioner, but no action has been taken. However, as could be seen from the counter-affidavit of the first respondent, certain steps have been taken to remove the said encroachment to avoid inconvenience to the public more particularly to the petitioner. It is further stated in the counter-affidavit that the respondents could not proceed further in the matter in view of the sentiments of the people who started those constructions and also out of some apprehensions. It is also stated that when

the construction was started, the first respondent intervened and stopped the same, and thereafter further action could not be taken due to intervention of political groups and religious people.

4. An Advocate Commissioner in fact was appointed by this Court and the report of the Advocate-Commissioner also reveals that the alleged encroachment is factually correct. Therefore, having regard to the report of the Advocate-Commissioner, it is obvious that there is an encroachment made by some people having religious sentiments, causing inconvenience to the public, particularly to the petitioner. When once it is established that certain property is encroached, the object of such encroachment, might be for a social cause, might be for a religious cause or might be for some other cause which is immaterial, cannot deter the respondents from reacting in an appropriate manner i.e., in the manner as prescribed under law. The respondents have to perform their statutory duties as and when an illegality by way of an encroachment is found and initiate necessary action in accordance with law. The public authorities are not supposed to step back, for any other reason, if the illegality is found to be factual in nature. The reasons shown in the counter-affidavit cannot, in fact be, accepted by the Court. The sentiments of the people and the related problems that are likely to be created by some individuals or group of individuals cannot be a ground for the authorities to shy away from performance of their statutory duties. Of course, the performance of such statutory duties should be in a humble, decent, and dignified manner and such duties should be performed without any fear or favour. The apprehensions expressed in the counter-affidavit and the consequential in-capability of performance of such statutory duties would send, with all certainties, a wrong message to the public, sometimes to the anti social elements. Such a feeling should not be allowed to creep into the minds of the people, who have no faith or respect to the rule of Law and orderly behaviour. The functionaries of the State should adhere to the duties prescribed under law and their primary duty is only to protect and preserve the rule of law and to see that no inconvenience is caused to the citizens by the illegal activities of some individuals.

5. Therefore, suffice it in the facts and circumstances, to dispose of the writ petition with a direction to the respondents to take such necessary steps as provided under law to prevent the established encroachment in question without yielding to any pressure from any source. No costs.

30-07-2004

vs

To

1 The Commissioner,Minicipal Corporation of Hyderabad
Tank Bund Road, Hyderabad.
2 The Dy.Commissioner of Police, South Zone
Hyderabad.
3 The Station House Officer Saidabad Police Station
Saidabad Hyderabad.

4 Two CCs to the G.P for Home, High Court Buildings, Hyderabad(O.U.T).

5 Two CD copies.

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THE HON'BLE MR JUSTICE D.S.R.VARMA

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Dated: 30-07-2004